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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120213124-2225-01]

RIN 0648-BB91

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management  
Measures

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures  
described in a regulatory amendment to the Fishery Management  
Plan for the Reef Fish Resources of the Gulf of Mexico (FMP)  
prepared by the Gulf of Mexico Fishery Management Council  
(Council). If implemented, this rule would increase the  
commercial and recreational quotas for red snapper in the Gulf  
of Mexico (Gulf) reef fish fishery for the 2012 fishing year,  
and for the 2013 fishing year if NMFS determines the acceptable  
biological catch (ABC) is not exceeded in the 2012 fishing year.  
This rule would also eliminate the October 1 closure date of the  
recreational fishing season. This proposed rule is intended to

provide more flexibility in managing recreational red snapper and to help achieve optimum yield (OY) for the Gulf red snapper resource without increasing the risk of red snapper experiencing overfishing.

DATES: Written comments must be received on or before [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2012-0024" by any of the following methods:

- Electronic submissions: Submit electronic comments via the Federal e-Rulemaking Portal:  
<http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Cynthia Meyer, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required field if you wish

to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2011-0024" in the search field and click on "search". After you locate the proposed rule, click the "Submit a Comment" link in that row. This will display the comment web form. You can enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the "Commenting" section at <http://www.regulations.gov/#!faq> or the Help section at <http://www.regulations.gov>.

Electronic copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at

<http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, Southeast Regional Office, NMFS, telephone 727-824-5305; email: [Cynthia.Meyer@noaa.gov](mailto:Cynthia.Meyer@noaa.gov).

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

#### Background

The Southeast Data, Assessment, and Review (SEDAR) update assessment for Gulf red snapper, conducted in August 2009 (SEDAR 9), determined that overfishing had ended for the red snapper stock, and that the ABC may be increased. The stock, however, is still overfished and under a rebuilding plan through 2032. The next SEDAR benchmark stock assessment currently scheduled for Gulf red snapper is in 2012.

The Council's Scientific and Statistical Committee (SSC) met January 10-13, 2012, and recommended new ABCs for the 2012 and 2013 fishing years. For 2012, the SSC recommended an ABC of 8.080 million lb (3.665 million kg) and for 2013, the SSC recommended an ABC of 8.690 million lb (3.942 million kg). The Council met January 30 - February 2, 2012, and voted to implement these new ABCs through the 2012 Gulf red snapper regulatory amendment.

#### Management Measures Contained in this Proposed Rule

This rule would set the 2012 and 2013 commercial and

recreational quotas for red snapper based on the ABCs recommended by the SSC and on the current commercial and recreational allocations (51-percent commercial and 49-percent recreational). Therefore, the 2012 commercial quota would be set at 4.121 million lb (1.869 million kg), round weight, and the 2012 recreational quota would be set at 3.959 million lb (1.796 million kg), round weight. The 2013 quotas would be set at 4.432 million lb (2.010 million kg), round weight, for the commercial sector, and 4.258 million lb (1.931 million kg), round weight, for the recreational sector, if NMFS determines that the ABC is not exceeded in the 2012 fishing year. If NMFS determines the 2012 ABC is exceeded, NMFS will maintain the 2012 commercial and recreational quotas in the 2013 fishing year. If this is the case, the Assistant Administrator will file a notification with the Office of the Federal Register to announce that commercial and recreational quotas will remain at 2012 levels in the 2013 fishing year.

This rule would change the end of the recreational fishing season from October 1 to December 31. Under 50 CFR 622.34 (m), the red snapper recreational fishing season opens each year on June 1 and closes when the recreational quota is projected to be reached, but no later than October 1. Prior to June 1 each year, NOAA projects the closing date based on the previous

year's data, and notifies the public of the closing date for the upcoming season. If subsequent data indicate the quota has not been reached by that closing date, NMFS may reopen the season, but only until the October 1 end date.

In 2010, following the closure of large areas of the Gulf in response to the Deepwater Horizon MC252 oil spill, NMFS determined the recreational quota was not caught during the open period. However, the October 1 end of the fishing season prevented NMFS from reopening the season to allow the remainder of the recreational quota to be caught. Instead, the Secretary had to take emergency action to reopen the season. Changing the end date of the fishing season to December 31 will allow NMFS to reopen the season through December 31, the end of the fishing year, thus maximizing this sector's opportunity to harvest its full quota and giving the Council and NMFS greater flexibility to manage the red snapper recreational fishing season.

In addition to proposing the change to the end of the fishing season, NMFS is currently reviewing preliminary landings information used in projecting recreational red snapper harvest for the 2012 fishing year. After finalized 2011 recreational landings data are available and before the season opens on June 1, 2012, NMFS will announce when the 2012 quota is projected to be harvested. NMFS may announce when the 2012 quota is

projected to be harvested in the final rule associated with this action.

The red snapper management measures contained in this proposed rule would achieve the goal of National Standard 1 of the Magnuson-Stevens Act, which states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield for the fishery.

#### Other Changes to Codified Text

This rule also proposes to revise the definition for "shrimp" in the codified text, which was inadvertently not revised in a previous final rule. The final rule for Amendment 5 to the FMP for the Shrimp Fishery of the Gulf of Mexico (56 FR 22827, May 17, 1991) removed "seabobs" from the fishery management unit (FMU), however, the definition for "shrimp" in § 622.2 was not revised to remove "seabobs" at that time. Seabobs were never included in the FMU under the FMP for the Shrimp Fishery of the South Atlantic Region, and both FMP's management units are comprised of the same species. This rule would revise the definition of "shrimp" to correct NMFS' oversight.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of

the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to eliminate the October 1 closure date of the recreational fishing season to provide more flexibility in managing recreational red snapper, set the 2012 commercial and recreational quotas for the red snapper component of the Gulf reef fish fishery, and set the 2013 commercial and recreational quotas for red snapper if NMFS determines the ABC is not exceeded in the 2012 fishing year. These proposed actions would be expected to increase the likelihood of achieving OY. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would be expected to directly affect all commercial vessels and for-hire vessels that harvest red snapper. In order to harvest red snapper in excess



of the bag limit and sell red snapper, a commercial reef fish permit and enough allocation in a fisherman's IFQ account is required. An estimated 920 vessels possess a commercial Gulf reef fish permit. However, over the period 2007-2010, only an average of 323 vessels per year recorded commercial red snapper harvests. As a result, for the purpose of this assessment, NMFs estimates that the number of potentially affected commercial vessels to range from 323-920. The average commercial vessel in the Gulf reef fish fishery is estimated to earn approximately \$48,000 (all figures in 2010 dollars), while the average annual revenue for a vessel with red snapper landings was approximately \$88,000 over the period 2007-2010.

A Federal Gulf reef fish for-hire vessel permit is required for for-hire vessels to harvest red snapper. On January 30, 2012, there were 1,377 valid (non-expired) or renewable reef fish for-hire vessel permits. An expired permit may not be actively fished, but is renewable for 1 year from the date of expiration. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Although the for-hire permit does not distinguish between headboats and charterboats, an estimated 69 headboats operate in the Gulf. The average charterboat is estimated to earn approximately

\$89,000 in annual revenue, while the average headboat is estimated to earn approximately \$469,000.

No other small entities that would be expected to be directly affected by this proposed rule have been identified.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters and recreational services. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. The revenue threshold for a business involved in the for-hire fishing industry is \$7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, NMFS determined that all commercial and for-hire vessels expected to be directly affected by this proposed rule are for the purpose of this analysis small business entities.

This proposed rule, if implemented, would not be expected to significantly reduce profits for a substantial number of small entities. This proposed rule would eliminate the October 1 closure date of the recreational fishing season, set the

commercial and recreational quotas for 2012, and set the commercial and recreational quotas for 2013 if the ABC is not exceeded in the previous fishing year. At best, this action may result in increased operational efficiency and associated increased profits for for-hire entities associated with the recreational harvest of red snapper. The recreational red snapper season currently opens on June 1 and closes when the recreational sector quota is harvested, or is projected to be harvested, but no later than October 1. If the recreational quota is not harvested during this period, reopening the season would require additional regulatory action. Although the regulatory process required to reopen the season could, in theory, be completed in time to avoid a delay in reopening, i.e., the season could reopen on October 1, because of the administrative process, it is more likely that the season would end on October 1 and reopen later in the year. If this occurs, for-hire services associated with the recreational harvest of red snapper could not be continuously offered. Interruption of business could result in increased costs and operational inefficiencies, producing a net reduction in profits to for-hire entities despite a potentially unchanged number of total fishing trips and associated revenue. Eliminating the fixed October 1 closure date would be expected to increase the likelihood of an

uninterrupted season, eliminating these operational inefficiencies, and potentially increasing profits. As a result, at best, this action may increase the likelihood of improved operational efficiency and increased profits to small entities.

NMFS notes, however, that this action, if implemented, would not likely have any direct economic effect on any small entities in the near-term or foreseeable future. Currently, the recreational red snapper season can remain open, if quota is available, through September 30 and this proposed rule would change this date to December 31. The recreational red snapper season in recent years, however, with the exception of 2010 when harvest was reduced as a result of the Deepwater Horizon MC252 oil spill, has not extended beyond July or August. The 2011 season lasted 48 days, but the recreational quota was exceeded, and thus, the 2012 season is expected to be shorter. As a result, absent a reduction in the bag limit or other extreme circumstances that changes the effort, harvest rate, or availability of fish, the likelihood of the season extending to October 1 is not precisely known, but considered unlikely. Therefore, this action is not likely to have any direct economic effect on any small entities in the foreseeable future.

This proposed rule would also increase the combined

commercial and recreational red snapper quotas in 2012 by 895,000 lb (405,965 kg) and by an additional 610,000 lb (276,691 kg) in 2013 (or a total increase of 1.505 million lb (0.683 million kg) over the 2011 combined commercial and recreational quotas), if the 2012 combined quota is not exceeded. These increases would be expected to result in an increase in revenue and profits to the affected commercial and for-hire fishing businesses.

In summary, this proposed rule, if implemented, would be expected to increase profits to all directly affected small entities.

Because this proposed rule, if implemented, would not be expected to have any direct adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and  
recordkeeping requirements, Virgin Islands.

Dated: April 6, 2012

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Alan D. Risenhoover,  
Acting Deputy Assistant Administrator  
For Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622  
is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read  
as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.2, the definition for "shrimp" is revised to  
read as follows:

§ 622.2 Definitions and acronyms.

\* \* \* \* \*

Shrimp means one or more of the following species, or a  
part thereof:

- (1) Brown shrimp, Farfantepenaeus aztecus.
- (2) White shrimp, Litopenaeus setiferus.
- (3) Pink shrimp, Farfantepenaeus duorarum.
- (4) Royal red shrimp, Hymenopenaeus robustus.
- (5) Rock shrimp, Sicyonia brevirostris.

\* \* \* \* \*

3. In § 622.34, paragraph (m) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

\* \* \* \* \*

(m) Seasonal closure of the recreational sector for red snapper. The recreational sector for red snapper in or from the Gulf EEZ is closed from January 1 through May 31, each year. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

\* \* \* \* \*

4. In § 622.42, paragraphs (a)(1)(i) and (a)(2)(i) are revised to read as follows:

§ 622.42 Quotas.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) Red snapper. (A) For fishing year 2012--4.121 million

lb (1.869 million kg), round weight.

(B) For fishing year 2013--4.432 million lb (2.010 million kg), round weight.

\* \* \* \* \*

(2) \* \* \*

(i) Recreational quota for red snapper. (A) For fishing year 2012, the recreational quota for red snapper is 3.959 million lb (1.796 million kg), round weight.

(B) For fishing year 2013, the recreational quota for red snapper is 4.258 million lb (1.931 million kg), round weight.

\* \* \* \* \*

[FR Doc. 2012-8756 Filed 04/11/2012 at 8:45 am; Publication Date: 04/12/2012]